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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 5th July 2012

No. 5183—1I/1(BH-1)-12/2007 (Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 9th May 2012 in I. D. Case No. 33/2007 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Emami Paper Mills Ltd., Balgopalpur, Balasore and their workman Shri Laxmidhar Sahu was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 33 OF 2007

Dated the 9th May 2012

Present :

S. A. K. Z. Ahamed,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of M/s Emami Paper Mills Ltd., Balgopalpur, Balasore. . . First Party—Management

And

Their Workman . . . Second Party—Workman
Shri Laxmidhar Sahu

Appearances :

Shri M. K. Parhi, Sr. Manager	. . .	For the First Party—Management
Shri L. D. Sahu	. . .	For the Second Party—Workman himself.

AWARD

The Government of Odisha in the Labour & E.S.I. Department in exercise of powers conferred upon them by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Court for adjudication vide Order No. 9252—li/1(BH-1)-12/2007-L.E., dated the 2nd August 2007 :

"Whether the termination of the workman Shri Laxmidhar Sahu from services by the management of M/s Emami Paper Mills Ltd., Balgopalpur, Balasore with effect from the 1st July 2002 on the ground of reaching the age of superannuation vide Order No. 2091, dated the 18th June 2002 is legal and/or justified ? If not, to what relief Shri Sahu is entitled ?".

2. The case of the workman in brief, is that in the year 1992 he was working under a Contractor, namely, K. B. Mishra, who was executing works in the Emami Paper Mills Ltd., Balgopalpur, Balasore and while working so, he was inducted as a Helper under the management and subsequently confirmed in the said post with effect from the 20th June 2001. He asserts that during his continuance under the Contractor, he had furnished the School Leaving Certificate and basing on that necessary entries in connection with his date of birth and other particulars having been reflected in the E. S. I. Card. According to him, though his date of birth is the 22nd October 1950 and he was due to retire on the 22nd October 2009, yet the management vide its Letter No. 2091/EPM/PM., dated the 18th June 2002 retired him from service with effect from the 1st July 2002. His claim is that such retirement of his is nothing but an act of compulsory retirement which amounts to termination of service. The workman, in the circumstances has prayed for payment of his dues, salaries and other benefits along with interest from the 1st July 2002 till he actually attained the age of superannuation, i. e. the 22nd October 2008.

3. The management entered appearance and filed its written statement stating therein, *inter alia*, that the case is not maintainable and further challenging the legality of the reference made by the Government on the ground that the workman has already received his full and final settlement from the management. Disputing the School Leaving Certificate wherein the date of birth of the workman is reflected as the 22nd October 1950, it is stated by the management that the same is false and fabricated one. The specific stand of the management is that while working under the Contractor, M/s K. B. Mishra, the workman submitted an application, dated the 31st December 1998 enclosing therewith his bio-data and a xerox copy of School Leaving Certificate and basing on such information the management entered the date of birth of the workman as reflected in the School Leaving Certificate in all its registers and records. The categorical stand of the management is that the workman having furnished his date of birth as the 18th June 1944, he has been rightly superannuated from service with effect from the 1st July 2002. Further stand of the management is that at no point of time the workman had made any attempt/representation to the management to correct his date of birth in the record of the management and only after retirement and that too, after receiving the retirement benefits, he made representation to the management which was not permissible. Under the premises, the management has prayed to answer the reference as against the workman.

4. In view of the above pleadings of both the parties, the following issues are settled :

ISSUES

- (i) "Whether the termination of the workman Shri Laxmidhar Sahu from services by the management of M/s Emami Paper Mills Ltd., Balgopalpur, Balasore with effect from the 1st July 2002 on the ground of reaching the age of superannuation vide Order No. 2091, dated the 18th June 2002 is legal and/or justified ?
- (ii) If not, what relief Shri Sahu is entitled to ?"

5. Both the parties have adduced oral as well as documentary evidence. On behalf of the workman, two witnesses have been examined and out of them W. W. 1 is the workman himself and W. W. 2 is the Headmaster In-charge of the U. G. U. P. School, Dalimpal and proved the documents under the cover of Exts. 1 to 8/a. On the other hand, the management is examined its Sr. Manager (P & PR) as M. W. 1 and proved the documents under the cover of Exts. A to G.

FINDINGS

6. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for the sake of convenience.

It is not in dispute that during 1992 the workman was working under a Contractor and thereafter on an application being made by him, he was inducted as a Helper under the management with effect from the 20th June 2001. The real dispute between the parties is with regard to the date of birth of the workman. When the workman claims his date of birth to be the 22nd October 1950, the management claims it as the 18th June 1944. Dispute arose when the workman was superannuated from service by the management with effect from the 1st July 2002 basing on the informations supplied by the workman as per Ext. A and the School Leaving Certificate, Ext. B. For an effective answer to the reference it is therefore, necessary to determine first as to which date should be taken to be the actual date of birth of the workman.

7. The workman nowhere challenges the authenticity of either Ext. A, the application made by him to his employer or Ext. B, the xerox copy of the School Leaving Certificate. Rather, he admits in his cross-examination that he had furnished those documents at the time of his joining under the management. As per Ext. A and Ext. B the date of birth of the workman is the 18th June 1944. Ext. B reflects that it was issued on the 20th June 1992. The workman having admitted to have engaged under the Contractor in the year 1992, it is quite reasonable to presume that he must have disclosed all his particulars before the Contractor and must have produced the testimonials showing his date of birth. So the subsequent certificate (Ext.1) issued on the 26th May 1995 showing his date of birth to be the 22nd October 1950 cannot be accepted as a genuine certificate, even if W. W. 2 certifies it to have been issued from the same School. W. W. 2 in Para. 3 of his cross-examination has stated that Ext. B was issued from the said School on the 20th June 1992. That apart, the counterfoils of the School Leave Certificate produced by W. W. 2 under the cover of

Ext. 8 casts a doubt on its authenticity because of the fact that on and from the 18th July 1991 not a single School Leaving Certificate has been issued till the 16th July 1992 during which period Ext. 8 was issued from the School. Likewise, no reliance can be placed on Exts. 7 and 7/a, i. e. School Admission Register and the relevant entries respectively. On perusal of the above document, it appears that no certificate was endorsed by the authority nor there appears any page certificate. Further W. W. 2 admits that there has been no page certificate and he had no knowledge about the person who made the relevant entry at the relevant point of time in Ext. 7. He further failed to state whether the workman had made any application for obtaining his School Leaving Certificate, Ext. 1. He also failed to explain as to who has made the entry in Ext. 8. Only basing on Ext. 2, the E. S. I. Card, the date of birth of the workman cannot be held to be 22nd October 1950, in as much as, no other records relating to the said Card have been produced nor any one from the E. S. I. is examined to say that the date of birth of the workman which appears to be over-written in the E. S. I. Card is correct.

8. On a careful scrutiny of the documents exhibited by both the parties, this Court comes to the conclusion that Ext. B being a genuine document the date of birth recorded therein is correct one.

9. Besides the factual aspect, the workman during his encumbency under the management has never made any representation praying to correct his date of birth. It is only after his superannuation and that too after lapse of more than two and half years he raised the dispute which is clearly evident from the conciliation failure report which is annexed to the order of reference. This is yet another aspect to discard the subsequent documentary evidence produced by the workman with regard to his plea for correction of date of birth and the consequent relief sought for by him. In the context, it is pertinent to refer to the decision of the Hon'ble Supreme Court, reported in 2005 (106) FLR 910 (S.C.) (State of U. P. and another *Vrs. Shiv Narain Upadyaya*) wherein their Lordships by referring to a catena of decisions of the Hon'ble Supreme Court as well as of the High Courts have observed as follows :—

"As observed by this Court in State of Tamil Nadu *Vrs. T. V. Venugopalan* and State of Odisha and others *Vrs. Ramanath Patnaik*, when the entry was made in the service record and when the employee was in service he did not make any attempt to have the service record corrected, any amount of evidence produced subsequently is of no consequence."

10. In view of the discussions, made in the preceding paragraphs and keeping in view the verdict of the Hon'ble Apex Court, it is held that the action of the management in retiring the workman with effect from the 1st July 2002 on the ground of reaching the age of superannuation is legal as well as justified. The superannuation of the workman cannot be said to be termination of service and consequently he is not entitled to any relief.

11. Hence Ordered :

That the termination of the workman Shri Laxmidhar Sahu from services by the management of M/s Emami Paper Mills Ltd., Balgopalpur, Balasore with effect from the 1st July 2002 on the ground of reaching the age of superannuation vide Order No. 2091, dated the 18th June 2002 is legal and justified. The workman Shri Sahu is not entitled to any relief as prayed for.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
9-5-2012
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
9-5-2012
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
M. R. CHOUDHURY
Under-Secretary to Government